

FERRAIUOLI LLC
390 N. Orange Avenue
Suite 2300
Orlando, Florida 32801
Telephone: (407) 982-7310
Facsimile: (787) 766-7001
Email: scolon@ferraiuoli.com
Email: gchico@ferraiuoli.com

Attorneys for *Santa Rosa Mall, LLC*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**EMERGENCY MOTION FOR AN ORDER SHORTENING NOTICE WITH RESPECT TO
MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND MEMORANDUM IN
SUPPORT THEREOF AND/OR TO DECLARE THAT THE INSURANCE PROCEEDS ARE
NOT PART OF THE BANKRUPTCY ESTATE**

(Related Docket No. 3475)

TO THE HONORABLE COURT:

COMES NOW, Santa Rosa Mall, LLC ("Santa Rosa Mall"), by and through its undersigned counsel, and respectfully state and pray as follows:

1. On May 1, 2019, Santa Rosa Mall filed a *Motion for Relief from the Automatic Stay and Memorandum in Support Thereof and/or to Declare that the Insurance Proceeds are not Part of the Bankruptcy Estate* (the "*Stay Relief Motion*", Docket No. 3475). As further detailed in the *Stay Relief Motion*, Santa Rosa Mall requests the Court enter an order declaring that the insurance proceeds are not part of the bankruptcy estate and/or grant limited relief from the automatic stay so that it may seek non-bankruptcy relief against non-debtor third-parties. Santa Rosa Mall fully incorporates the *Stay Relief Motion* as if fully transcribed herein.

2. Pursuant to the *Amended Case Management Procedures Order* (Docket No. 405), motions for relief from the automatic stay shall be noticed for consideration on the Omnibus Hearing Date that is at

least twenty-one (21) days after the motion is filed and notice thereof is served upon the Debtors. *Id.* at pp. 12-13, ¶ 32.

3. The *Stay Relief Motion* was noticed for consideration on the May 21, 2019 Omnibus Hearing date, with an objection deadline set for May 14, 2019.

4. Yesterday, May 6, 2019, the Debtors counsel notified Santa Rosa Mall via electronic mail that the *Stay Relief Motion* would be adjourned to June 20, 2019, a full 50 days after the filing of the *Stay Relief Motion*.

5. In an effort to reach a timely solution to this issue, Santa Rosa Mall proposed extending Debtor's objection deadline from May 14th at 4:00 p.m. to May 16th at 4:00 p.m., contingent upon the May 21st Omnibus Hearing date. The Debtors did not concede to Santa Rosa Mall's proposal.

6. By this *Emergency Motion to Shorten*, Santa Rosa Mall request entry of an order, pursuant to Section 362(e) of the Bankruptcy Code and Fed. R. Bankr. P. 9006(c), shortening the notice period with respect to the *Stay Relief Motion* filed, and setting the date and time for the hearing on the *Stay Relief Motion* for May 21, 2019 at 10:00 a.m. (Eastern Time) (the "*Hearing*"), or as soon thereafter as counsel may be heard.

7. Fed. R. Bankr. P. 9006(c) provides that "when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced." Fed. R. Bankr. P. 9006(c).

8. The instant request is also consonant with Section 362(e) of the Bankruptcy Code, which affords a movant for relief from the automatic stay with a statutory right **to have a preliminary hearing on their motion within 30 days** of filing or the stay automatically terminates. *See* 11 U.S.C. § 362(e). "If the Bankruptcy Court conducts a final hearing on the matter within this 30 day window, the statute is satisfied and the Bankruptcy Court may either decide the matter at the hearing or continue the stay pending the Court's ultimate decision." *In re AdBrite Corp.*, 290 B.R. 209, 221 (Bankr. S.D.N.Y. 2003), citing *In re Bennett Funding Group, Inc.*, 255 B.R. 616, 639 (N.D.N.Y. 2000).

9. Section 362(e) is self-executing. Consequently, the stay automatically terminates thirty days after a request for relief unless the court orders it continued or renders a decision. See In re Codesco, Inc., 24 B.R. 746, 751 (Bankr. S.D.N.Y. 1982); In re Sandmar, 16 B.R. 120 (Bankr. N. Mex. 1981); In re Kleinsasser, 12 B.R. 452 (Bankr. S.Dak. 1981); In re Memphis, 10 B.R. 306 (Bankr. W.D. Tenn. 1981); In re Feimster, 3 B.R. 11 (Bankr. N.D.Ga. 1979).

10. Santa Rosa Mall respectfully requests the notice period for the *Stay Relief Motion* be shortened and the hearing be set for May 21, 2019 at 10:00 a.m. (Eastern Time), or as soon thereafter as Santa Rosa Mall may be heard in accordance with 11 U.S.C. § 362(e).

11. The foregoing request is not unprecedented. Courts within this District have allowed parties to file motions seeking relief, including to lift the automatic stay, on shortened notice. See e.g. In re Metro Affiliates, Inc., Case No. 13-3591 (SHL) (Bankr. S.D.N.Y. Dec. 3, 2013) (granting motion for order shortening notice period for certain emergency relief from automatic stay); In re MF Global Holdings Ltd., (Bankr. S.D.N.Y. Nov. 14, 2011) (granting motion for order shortening notice for hearing to consider motion for conditional relief from automatic stay); In re Celeste Wenegieme, Case No. 16-12354 (LJG) (Bankr. S.D.N.Y. Aug. 24, 2016) (granting application to shortening time to notice hearing to terminate automatic stay); In re 919 Prospect Ave LLC, Case No. 16-13569-SCC (Bankr. S.D.N.Y. Jan. 19, 2017) (granting motion for order to show cause shortening notice and scheduling hearing to consider emergency motion for order granting relief from automatic stay);

12. No party in interest would be adversely prejudiced by the shortened notice and that Santa Rosa Mall will be severely prejudiced if this matter is not heard on an expedited basis.

13. Parties in interest are aware and have been notified of the *Stay Relief Motion*.

14. Based on the foregoing, Santa Rosa Mall respectfully submits that cause exists to shorten the notice period with respect to the *Stay Relief Motion*.

15. For this Court's consideration, a proposed *Notice of Hearing* and a proposed order granting the relief requested herein (the "Proposed Order") are attached hereto as **Exhibit I** and **Exhibit II**, respectively.

Notice

16. Notice of this *Emergency Motion to Shorten* will be provided in accordance with the *Amended Case Management Procedures Order* (Docket No. 405). Santa Rosa Mall respectfully submits that no other or further notice is required.

17. No previous request for the relief sought herein has been made by Santa Rosa Mall to this or any other Court.

Prayer for Relief

WHEREFORE, Santa Rosa Mall respectfully prays the Court to enter the order granting the foregoing motion and shorten the objection period for the *Stay Relief Motion* and a hearing be set for May 21, 2019 at 10:00 a.m. (Eastern Time), or as soon thereafter as counsel may be heard, and further relief as is just and appropriate.

Respectfully submitted.
Dated: May 7, 2019.

Ferraiuoli LLC
221 Ponce de León Avenue
5th Floor
San Juan, PR 00917
Telephone: (787) 766-7000
Facsimile: (787) 766-7001

/s/ Sonia E. Colon Colon
Sonia E. Colón Colón
Admitted *Pro Hac Vice*
USDC-PR No. 213809
scolon@ferraiuoli.com

/s/ Gustavo A. Chico-Barris
Gustavo A. Chico-Barris
USDC-PR No. 224205
gchico@ferraiuoli.com

Attorneys for
Santa Rosa Mall, LLC